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No. 07-110

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SUPREME COURT, U.S.

In The
Supreme Court of the United States

A. J. ARAVE,

Petitioner,

v.

MAXWELL HOFFMAN,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONSE TO RESPONDENT'S MOTION TO VACATE DECISION BELOW AND DISMISS THE CAUSE AS MOOT

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RESPONSE TO RESPONDENT'S MOTION TO VACATE DECISION BELOW AND DISMISS THE CAUSE AS MOOT

COMES NOW, Petitioner, Arvon J. Arave ("state"), by and through his attorney of record, L. LaMont Anderson, and hereby responds to Respondent's Motion to Vacate Decision Below and Dismiss the Cause as Moot.

Respondent Maxwell Hoffman was convicted of first-degree murder and sentenced to death. *See State v. Hoffman*, 851 P.2d 934 (Idaho 1993). After completing state appeals, Hoffman eventually filed a Second Amended Petition for Writ of Habeas Corpus. App. at 84-131. The United States District Court for the District of Idaho concluded Hoffman was entitled to habeas relief on two claims in his petition, resulting in the court ordering the State of Idaho to re-sentence him within 120 days; the court denied relief on all other claims, including ineffective assistance of counsel during plea negotiations and trial. App. at 38-65.

While both parties initially appealed the district court's decision, the state subsequently withdrew its appeal, leaving in place the district court's order granting habeas relief as to Hoffman's death sentence. App. at 7. However, while the Ninth Circuit Court of Appeals affirmed the district court's decision regarding ineffective assistance of counsel at trial, the court reversed regarding ineffective assistance during plea negotiations and ordered the district

court to direct the state to release Hoffman unless "the State offers Hoffman a plea agreement with the 'same material terms' offered in the original plea agreement." App. at 37.

The state sought certiorari from this Court asserting the Ninth Circuit erred in finding both deficient performance and prejudice, Pet. at i-ii, and expressly requesting, "that a writ of certiorari be granted and the judgment of the Ninth Circuit Court of Appeals be summarily reversed." Pet. at 23. On November 5, 2007, this Court granted certiorari regarding both questions and directed the parties to brief and argue the following question: "What, if any, remedy should be provided for ineffective assistance of counsel during plea bargain negotiations if the defendant was later convicted and sentenced pursuant to a fair trial?"

Hoffman has now filed a Motion to Vacate Decision Below and Dismiss the Cause as Moot, asserting he "no longer seeks or desires the relief ordered by the Court of Appeals with respect to the plea offer," and "wishes to withdraw his claim of ineffective assistance of counsel in connection with plea bargaining and dismiss his appeal on that issue in the Court of Appeals below, in order to proceed with resentencing without further delay."

Because Hoffman wishes to withdraw his claim of ineffective assistance of counsel regarding plea negotiations and vacate that aspect of the Ninth Circuit's decision regarding plea negotiations, the state concurs that this case would be moot upon

vacating the lower court's order because Hoffman's "argument amounts to a decision to no longer seek" the remedy he sought in his second amended habeas petition and ordered by the Ninth Circuit. *Webster v. Reproductive Health Services*, 492 U.S. 490, 512 (1989). Because Hoffman's request is virtually identical to the request made by the state in its Petition for Certiorari – vacating the Ninth Circuit's decision regarding ineffective assistance of counsel during plea negotiations and denying habeas relief as to that claim – there is no case or controversy pending before this Court if the Ninth Circuit's decision is vacated pursuant to Hoffman's motion.

The state respectfully requests that Hoffman's motion be granted and this Court direct the Ninth Circuit to vacate that portion of its opinion relating to ineffective assistance of counsel during plea negotiations and direct the district court to dismiss the relevant portion of Hoffman's second amended petition with prejudice. *Id.* at 513.

Respectfully submitted,

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